IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4142 OF 1999

Shri Dattatraya Dharma Patil)
aged adult, residing at &)
post Sirki, Taluka Pen,)
Dist.Raigad.) ..PETITIONER.

Vs.

1. State of Maharashtra,)
through its Secretary,)
Social Welfare Department,)
Mantralaya, Mumbai-400 032.)

2. Pen Education Society,)
through its Chairman,)
Pen District Raigad.)

3. Zilla Parishad, Raigad)
through its Education)
Officer (Secondary),)
Alibag, Dist.Raigad.)

4. Director of Education,)
Government of Maharashtra,)
Mumbai.) ...RESPONDENTS.

Mr.R.K.Mendadkar, Advocate for the Petitioner.
Mr.Neel Helekar, Advocate for Respondent No.2.
Ms.P.S.Cardozo, AGP, for the state-R.1,3 & 4.

CORAM : SMT.RANJANA DESAI AND
SMT.V.K.TAHILRAMANI,JJ.

DATED : 29TH AUGUST, 2006.

ORAL JUDGMENT : (PER SMT.RANJANA DESAI,J.)

1. The petitioner is a physically handicapped person possessing B.A.(Hindi) and B.Ed. (Hindi and Geography) degree of Bombay University. The

petitioner belongs to Other Backward Class category.

2. It appears that the petitioner had filed Writ Petition 5222 of 1997 in this Court seeking a direction to Pen Education Society, Pen, District Raigad (respondent 2 herein) for appointing him as a teacher. On 14.1.1998 the said Writ Petition was disposed of by this court by passing the following order:

> . Heard the learned counsel for the petitioner and respondents. Mr.Navare, the learned counsel for the Respondents made a statement that as against a next vacancy of the post of teacher in Hindi or Geography, the petitioner would be considered for appointment by giving necessary preference to him being a handicapped person. With this, the petition is disposed of.

3. Basically, the grievance of the petitioner is that after the above order, the petitioner visited the office of respondents 2 & 3 several times and requested them to appoint him. However, there was no favourable response from them. Being aggrieved by this action of the respondents, the petitioner has approached this court.

4. The petitioner has inter-alia prayed that a direction be issued to respondent 2 to appoint the petitioner to the post of teacher in the reserved category of physically handicapped otherwise found eligible candidates.

5. We have heard Mr.Mendadkar learned counsel appearing for the petitioner. Mr.Mendadkar contended that on 14.1.1998 a solemn statement was made before this court by the counsel appearing for respondent 2 that the petitioner will be considered for appointment by giving necessary preference to him against a next vacancy of the post of teacher in Hindi or Geography. However, till date the second respondent has not complied with this assurance. Mr.Mendadkar contended that respondent 2 Institute is a fully aided institute and, therefore, it is bound to follow the Government policy in general, and reservation policy with regard to 3% reservation to physically handicapped persons in particular. Mr.Mendadkar contended that respondent 2 has not filled-up any vacancy against the physically handicapped persons category. He submitted that therefore, it is necessary to give a direction to respondent 2 to follow the policy of the Government,

failing which respondent 3 must be directed not to grant any aid to respondent 2 Institute.

6. We have also heard Mr.Helekar learned counsel for respondent 2 and Ms.Cardozo learned AGP for State-respondents 1, 3 & 4.

7. Mr.Helekar learned counsel for respondent 2 drew our attention to the affidavit of Mr.Deo, chairman of respondent 2 society, dated 24.2.2003. In this affidavit, it is stated that since the order of this court dated 14.1.1998, there is no vacancy of the post of teacher in Hindi or Geography. It is, further stated that after the above said order, respondent 2 society has not appointed any teacher for the subjects Hindi or Geography. In support of this statement, letter dated 8.2.2003 addressed to the Education Officer, Raigad Zilla Parishad, Raigad by respondent 2 is annexed to the affidavit. We have perused the said letter. From the said letter, it does appear that the appointments made by respondent 2 are for different subjects and they were made to clear the reservation backlog; and during that period no appointments have been made from O.B.C. category.

8. It appears that, the petitioner filed a rejoinder to this affidavit stating that the affidavit of Shri.Deo does not depict true state of affairs and that respondent 2 has appointed one Smt.Suvarna Bhikaji Mokal during the academic year 2000-2001 for the subjects Hindi and Geography.

9. Shri.Deo has filed another affidavit dated 25.4.2003 clarifying that Smt.Suvarna Mokal has been appointed from the academic year 1996-1997 and has continued during the academic year 1999-2000. Mr.Helekar submitted that thereafter Smt.Mokal's appointment was terminated. It is stated in the affidavit by Mr.Deo that Smt.Mokal filed an appeal before the School Tribunal, and the Presiding Officer of the School Tribunal allowed her appeal by order dated 8.11.2000 directing respondent 2 to reinstate her. Smt.Suvarna Mokal was thus reinstated pursuant to the said order. In our opinion, therefore, from the appointment of Smt.Mokal, it cannot be said that there was infact a vacancy of a teacher of Hindi & Geography and respondent 2 has failed to appoint the petitioner despite assurance given to this Court.

10. Mr.Helekar learned counsel for respondent 2 has also pointed out that the total sanction posts in respondent 2 society are 154, and as there is 3% reservation for disabled persons the sanctioned posts would be about 4 & 1/2. It appears that as of today 6 disabled persons are already working in respondent 2 school. Therefore, even if it is said that five disabled persons have to be accommodated in respondent 2 school as of today, respondent 2 has exceeded the reservation quota of physically handicapped persons. Mr.Helekar learned counsel for respondent 2 has also pointed out that so far as Other Backward Class quota is concerned there are 29 sanctioned posts as per hundred point roster. However, respondent 2 has already appointed 49 persons belonging to O.B.C. category and there is excess of 20 persons. He submitted that therefore as of today it is not possible to accommodate the petitioner in the said category.

11. In view of the above, we are of the opinion that it cannot be said that respondent 2 has purposely not kept the promise made to this court which is recorded by this court in its order dated 14.1.1998. However, in the facts and circumstances

of this case, we are of the opinion that since the counsel for respondent 2 had given an assurance to this court, respondent 2 should try to keep its promise and accommodate the petitioner who is 60% disabled person. The learned counsel for the petitioner states that if post of Hindi and/or Geography teacher is not available, the petitioner may be accommodated in any other category of teachers as per his qualification, as over the years he has eight years experience in teaching several subjects also. The learned counsel for respondent 2 states that respondent 2 will consider appointing the petitioner as teacher in any other subject according to his qualifications subject to approval of respondent 3. We record this statement.

12. In the facts and circumstances of the case, we hope and trust that respondent 2 and 3 will approach this case sympathetically.

13. Writ petition is disposed of in aforesaid terms.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]